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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/324,601	06/02/1999	STEVEN C. ROBERTSON		1766
49701	7590	07/31/2006	EXAMINER	
PATRICK M. DWYER PC 1818 WEST LAKE AVENUE N SUITE 114 SEATTLE, WA 98109-2707			ART UNIT	PAPER NUMBER

DATE MAILED: 07/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Notice of Defective Appeal Brief

A review of Appellant's Appeal Brief filed 7/10/2006 has revealed that the application is not ready for an Examiners Answer. Accordingly, this Notice of Defective Appeal Brief is being sent to the Appellant. The matters requiring attention prior to and Examiners Answer are identified below:

The Appeal Brief does not comply with 37 CFR § 41.37(c). The specific errors found in the Appeal Brief are checked for the appropriate requirement needing attention:

Requirement 1 X

A review of the file indicates that appellant filed the Appeal Brief of January 27, 2005 using the format set forth in 37 CFR § 1.192(c). However, 37 CFR § 1.192 was abolished on September 13, 2004, and replaced by 37 CFR § 41.37(c). Accordingly, the Appeal Brief filed on January 27, 2005 does not comply with 37 CFR § 41.37(c).

37 CFR S 41.37(c) states:

Requirement 2 X

(c)(1) The brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c) (1) (i) through (c) (1) (x) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i) through (c) (1) (iv) and (c) (1) (vii) through (c) (1) (x) of this section:

Requirement 3 X

(i) Real party in interest. A statement identifying by name the real party in interest.

Requirement 4 X

(ii) Related appeals and interferences. A statement identifying by application, patent, appeal or interference number all other prior and pending appeals, interferences or judicial proceedings known to appellant, the appellant's legal representative, or assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. Copies of any decisions rendered by a court or the Board in any proceeding identified under this paragraph must be included in an appendix as required by paragraph (c)(1)(x) of this section.

Requirement 5 X

(iii) Status of claims. A statement of the status of all the claims in the proceeding (e.g., rejected, allowed or confirmed, withdrawn, objected to, canceled) and an identification of those claims that are being appealed.

Requirement 6 X

(iv) Status of amendments. A statement of the status of any amendment filed subsequent to final rejection.

Requirement 7 X

(v) Summary of claimed subject matter. A concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with

reference to the specification by page and line number, and to the drawing, if any, by reference characters.

Requirement 8 X

(vi) Grounds of rejection to be reviewed on appeal. A concise statement of each ground of rejection presented for review.

Requirement 9 X

(vii) Argument. The contentions of appellant with respect to each ground of rejection presented for review in paragraph (c)(1)(vi) of this section, and the basis therefor, with citations of the statutes, regulations, authorities, and parts of the record relied on. Any arguments or authorities not included in the brief or a reply brief filed pursuant to § 41.41 will be refused consideration by the Board, unless good cause is shown. Each ground of rejection must be treated under a separate heading. For each ground of rejection applying to two or more claims, the claims may be argued separately or as a group. When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim

alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately. Any claim argued separately should be placed under a subheading identifying the claim by number. Claims argued as a group should be placed under a subheading identifying the claims by number. A statement which merely points out what a claim recites will not be considered an argument for separate patentability of the claim.

Requirement 10 X

(viii) Claims appendix. An appendix containing a copy of the claims involved in the appeal.

Requirement 11 X

(ix) Evidence appendix. An appendix containing copies of any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the examiner and relied upon by appellant in the appeal, along with a statement setting forth where in the record that evidence was entered in the record by the examiner. Reference to unentered evidence is not permitted in the brief. See § 41.33 for treatment of evidence submitted after appeal. This appendix may also include

copies of the evidence relied upon by the examiner as to grounds of rejection to be reviewed on appeal.

Requirement 12 X

(x) *Related proceedings appendix.* An appendix containing copies of decisions rendered by a court or the Board in any proceeding identified pursuant to paragraph (c) (1) (ii) of this section.

Requirement 13 X

(2) A brief shall not include any new or non-admitted amendment, or any new or non-admitted affidavit or other evidence. See § 1.116 of this title for amendments, affidavits or other evidence filed after final action but before or on the same date of filing an appeal and § 41.33 for amendments, affidavits or other evidence filed after the date of filing the appeal.

Requirement 14 X

(d) If a brief is filed which does not comply with all the requirements of paragraph (c) of this section, appellant will be notified of the reasons for noncompliance and given a time period within which to file an amended brief. If appellant does not file an

amended brief within the set time period, or files an amended brief which does not overcome all the reasons for noncompliance stated in the notification, the appeal will stand dismissed.

A substitute brief that is in compliance with 37 CFR § 41.37(c) is required.

Since the above-mentioned Appeal Brief appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

For more information on the Board's new rules see the web page entitled More Information on the Rules of Practice Before the BPAI, Final Rule at:

<http://www.uspto.gov/web/offices/dcom/bpai/fr2004/moreinfo.html>

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **571.272.6755**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Jeffrey A. Smith** can be reached on **571.272.6763**.

Any response to this action should be mailed to:

Commissioner for Patents

P.O. Box 1450

Alexandria, Va. 22313-1450

or faxed to:

571-273-8300 [Official communications; including
After Final communications labeled
"Box AF"]

For general questions the receptionist can be reached at

571.272.3600

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark Fadok
Primary Examiner